

[REDACTED],  
Complainant,

v.

**YORKTOWN CAFÉ INC d/b/a  
OSBORN'S COUNTRY KITCHEN,**  
Respondent.

## **NOTICE OF FINDING**

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred. 910 IAC 1-3-2(b)

On August 20, 2010, [REDACTED] ("Complainant") filed a complaint with the Commission against Yorktown Café, Inc. d/b/a Osborn's Country Kitchen ("Respondent") alleging sexual harassment in employment in violation of [REDACTED]

[REDACTED] the Indiana Civil Rights Law (IC 22-9, et seq.) Complainant is an employee and Respondent is an employer as defined by the Civil Rights Laws. IC 22-9-1-3(h) and (i) Accordingly, the Indiana Civil Rights Commission has jurisdiction over the parties and the subject matter of this complaint.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was sexually harassed. In order to prevail, Complainant must show that: (1) Complainant experienced unwelcome, offensive comments or actions of a sexual nature; (2) the comments/actions were severe or pervasive; (3) Complainant made it known that the comments were unwelcome; and (4) Respondent failed to take corrective action to address the hostile work environment resulting in Complainant's constructive discharge.

The available evidence, including witness testimony, indicates that Complainant experienced unwelcome, offensive comments or actions of a sexual nature in the workplace. Complainant claims that the [REDACTED] grabbed her breasts, touched her butt, brushed up against her body and put his hand down her pants in an attempt to grab her crotch. Witness testimony supports Complainant's claim of unwelcome harassment. Further evidence indicates that this harassment was severe and pervasive. Complainant claims that [REDACTED] touched her every weekend that she worked and also suggested that she call a friend so they could "have a threesome." Furthermore, witness testimony shows that other female employees have been subjected to similar sexual harassment. The available evidence shows that Complainant reported her allegations of harassment to a co-owner; however, there is no evidence to show that Respondent took any corrective action to address the hostile work environment. The available evidence shows there is no formal written sexual harassment policy in place.

Respondent claims that Complainant was terminated for excessive absenteeism. While Complainant acknowledges that she did miss work, the absences evidently resulted from the hostile work environment created by [REDACTED]. Respondent claims that Complainant was verbally warned about her attendance. Nevertheless, the available evidence shows Respondent does not have written rules, policies or procedures regarding attendance. Respondent lacks sufficient evidence to document the actual number of Complainant's absences.

Based upon the findings, probable cause exists to believe that an unlawful discriminatory practice occurred. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as

alleged in the above-referenced case. IC 22-9-1-18, 910 IAC 1-3-5 The parties may elect to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Indiana Civil Rights Commission will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

March 10, 2011  
Date

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Joshua S. Brewster, Esq.,  
Deputy Director  
Indiana Civil Rights Commission